THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.21651 OF 2004

DISPOSED OF ON 16-09-2005

BETWEEN:

PAGOLU BASAVA PUNNAIAH … PETITIONER

AND

THE MANAGING DIRECTOR, GUNTUR

DISTRICT MILK PRODUCERS MUTUALLY AIDED COOPERATIVE

UNION, SANGAM DAIRY, GUNTUR AND OTHERS

….RESPONDENTS

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O R D E R :

1. This writ petition has been filed by the petitioner with a prayer to issue a writ of mandamus directing the Manager, Andhra Bank, Gullapalli, Cherukupalli Mandalam, Guntur District-2nd respondent not to take any coercive steps against the petitioner society to recover alleged outstanding dues of Rs.6,24,000/- out of Rs.8,40,000/- and further directing 2nd respondent to release Rs.3,00,394/- in favour of petitioner society.

2. Pagolu Basava Punnaiah has given his sworn affidavit in support of the writ petition. It is stated in the writ affidavit that he is the President of Milk Producers Mutually Aided Cooperative Society (MPMACS) of Pudivada. He has been elected as the President of the Society for the year 2003-04. 3rd respondent is the former President of the said society and he abused his position and raised certain loans from 2nd respondent-Bank without the consent of members and without there being any resolution of the Society approving the availment of loans from the 2nd respondent-Bank. therefore 2nd respondent-Bank is not entitled to withhold any amount payable to the members of the Society. Para 4 of the affidavit needs to be noted and it is thus:

> " 4. While the matters stood thus the 2nd respondent on 24.7.2004 issued a notice to me stating that it is my responsibility to pay the outstanding dues a sum of Rs.6,24,000/- out of Rs.8,40,000/- payable by the members and the 2nd respondent also threatened me to continue the society operations i.e., directing me to receive the milk from the defaulting members, otherwise suitable action will be taken against me. An amount of Rs.2,58,900/- was withheld as per the letter dated 24.7.2004. I got issued a reply to the 2nd respondent on 2.8.2004, intimating him that there is no tripartite agreement between the Society, Sangam Dairy and Andhra Bank, I am not bound to pay the loan amount which is not supported by resolution. I am liable to pay only as per the resolution-dated 4.5.2003. I had requested the 2nd respondent to release a sum of Rs.2,58,000/- which is

unauthorisedly withheld by the Bank. Apart from Rs.2,58,000, end respondent withheld a sum of Rs.41,494 from the bill payable to the genuine milk suppliers. Therefore, the 2nd respondent-Bank has to reimburse the amount i.e. Rs.2,58,000 and another sum of Rs.41,494 to the society. Thus, a total sum of Rs.3,00,394 is to be recovered from the Bank by the Society. The 2nd respondent has no power to withhold above said amount. Now, the Regular members who are supplying the milk to the Society are insisting me to pay their due amount. I am unable to pay their dues as the Bank is withholding the amount of the Society illegally without any right. The 2nd respondent is now taking coercive steps against me to recover the alleged dues."

3. 2nd respondent-Bank filed counter affidavit. It is stated in the counter affidavit that this writ petition is not maintainable under law and also in view of the facts of the case as the respondents have not violated any constitutional or statutory right of the petitioner and as such the writ petition is liable to be dismissed in limine. The petitioner-Society requested the 2nd respondent-Bank to sanction medium loans to its members to enable them to purchase cattle for the purchase of supplying milk to the society. It was agreed by the society to deduct the amount payable to its members for supply of the milk and remit the amount to the bank towards repayment of the loan sanctioned to its members. The 2nd respondent-bank sanctioned loans to the members of the society who were identified by the President and other office bearers of the society. It is for the representatives of the society to obtain the approval from the Committee of the society and the bank does not have any role in that process. The loan amount sanctioned was Rs.14,000/- to each borrower and it is repayable in 36 instalments. The individual loanee executed the documents in favour fo the bank and they have repaid part of the amounts by way of remitting out of the amounts payable to them for supply of milk to the society. The society has operated their bank account with 2nd respondent-bank through the authorized signatories and on the basis of their instructions, the cheques were honoured and on few occasions debt entries were made after obtaining their signatures on debit vouchers and transferred the funds and credited the amount as a repayment towards individual loan accounts of its members. Irregularities committed, if any, by the erstwhile President of the Society in identifying the borrowers, the bank is not responsible for that and the right of the bank to recover the amounts would not be

defeated merely because new President assumed the office and noticed certain irregularities in the functions of former President of the Society.

4. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for 2nd respondent-Bank.

5. Learned counsel appearing for the petitioner submits that 3rd respondent while in office as President of the Society raised some loans without there being any resolutions by the Society members and therefore the Society cannot be made liable for the instalments payable towards the bogus loans. A further submission has been made that even in contractual matters also a writ is maintainable. Reliance has been placed on the decision of this Court in K.L.HI-TECH SECURE PRINT LIMITED v. U.P. STATE ROAD TRANSPORT CORPORATION wherein it has been held that contractual obligation can be enforced under Article 226 of the Constitution of India.

6. The Society stood as a guarantor for the loans availed by its members from 2nd respondent-Bank. Indeed part payments were made for the loans availed by the members of the Society. It is the contention of the petitioner that 3rd respondent who is ex-president of the Society raised certain bogus loans and misappropriated the amounts. It is beyond the scope of writ court to adjudicate upon the disputes between the Society and 3rd respondent. If 3rd respondent raised bogus loans, remedy for the petitioner lies elsewhere. Since 2nd respondent lent money to the members of the petitioner-society on its guarantee no writ can be issued against the 2nd respondent Bank, restraining it from recovering the amounts payable to it towards loan amount.

7. This writ petition is devoid of merits and the same is dismissed. No costs.

Dt: 16-09-2005. (B.Seshasayana Reddy,J)

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